

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**F.A.O No. 6667 of 2015(O&M)
Date of decision :05.01.2016**

Sheobai and another

..... Appellants

Versus

Med Parkash and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sushil Sheoran, Advocate
for the appellants.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

CM No. 20713-CII of 2015

There is delay of 14 days in filing the present appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 14 days in filing the appeal is hereby condoned.

F.A.O No. 6667 of 2015

The present first appeal has been preferred against the award

dated 25.05.2015 passed by the learned Motor Accident Claims Tribunal (for short 'Tribunal'), Bhiwani, whereby the claim petition filed by the appellants for grant of compensation on account of the death of Udmi Ram in the motor vehicular accident, which took place on 08.10.2013 has been dismissed.

2. The facts in nutshell are that on 08.10.2013, deceased Udmi Ram was going to his relatives in village Jewli, District Bhiwani during night. Respondent no.1 came on a motorcycle bearing registration No. DL-3S-AS-7175 driving the same at a high speed, rashly and negligently and hit the motorcycle against said Udmi Ram. Thereafter, he fled away from the spot. Udmi Ram succumbed to the injuries at the spot. The matter was reported to the police. Case bearing FIR No. 234 dated 09.10.2013, under Sections 279, 304-A Indian Penal Code was registered on the statement of Zile Singh. Deceased was 72 years of age and was self employed earning Rs. 20,000/- per month. Appellant no.1 is widow and appellant no.2 is the son of the deceased. They claimed the compensation to the tune of Rs. 10 lacs along with interest at the rate of 18 % per annum from the date of filing the petition till its realization.

3. The petition has been contested by respondents no. 1 and 3 by filing the separate written statements. Respondent no.2 has adopted the written statement filed by respondent no.1.

4. From the pleadings of the parties, the following issues were framed by the learned Tribunal vide order dated 20.02.2015:-

1. Whether the accident occurred on 08.10.2013 in the night hours, near Jewli Road Badhra, causing death of Udmi Ram son of Sh. Data Ram, took place due to rash and

negligent driving of respondent no.1, while driving the offending vehicle i.e. motorcycle bearing registration no.DL3S-AS-7175?OPP

2. If issue no.1 is proved, whether the petitioners are entitled to the compensation, if so to what amount and from whom?OPP

3. Whether the respondent no. 1 was not holding a valid and effective driving license at the time of alleged accident? OPR 1

4. Whether the insured has violated the terms and conditions of the insurance policy?OPR-3.

5. Whether the present petition is maintainable in the present form?OPR

6. Relief.

Issue no. 1 was decided against the appellants and resultantly the claim petition was dismissed. Hence this appeal.

5. I have heard Mr. Sushil Sheoran, Advocate, learned counsel for the appellants and has meticulously examined the paper book.

6. Initiating the arguments, learned counsel for the appellants contended that the criminal case for this accident was registered against respondent no.1 on the statement of Zile Singh, Chowkidar. The claimants have also produced in evidence the copy of the report under Sections 173 Code of Criminal Procedure, 1973 (for short Cr.P.C) Ex.P-2 and copy of the postmortem report Ex.P-1. The motorcycle in question was found at the spot and was in accidental condition. He contended that all these facts have not been taken into consideration by the learned Tribunal, which were sufficient to establish the negligence on the part of respondent no.1.

7. I have duly considered the aforesaid contentions.

8. The present petition was filed by the appellants under Section 166 of the Motor Vehicles Act, 1988. The Hon'ble Supreme Court

in case **Oriental Insurance Co. Ltd. Vs. Premlata Shukla & Ors. 2007(3) R.C.R (Civil) 301** has laid down that the proof of rashness and negligence on the part of driver of the vehicle is sine qua non for maintaining an application under Section 166 of the Act. In the instant case, appellant Sheobai has herself stepped into the witness box as PW-1. Learned counsel for the appellants has also tendered in evidence the copy of the ration card mark-A, attested copy of the postmortem report Ex.P-1, attested copy of the report under Section 173 Cr.P.C Ex.P-2, attested copy of the remand application Ex.P-3, copy of the driving license mark-B, copy of registration certificate mark-C and attested copy of application of Sapurdari Ex.P-4.

9. Appellant Sheobai, the widow of Udmi Ram is admittedly not the eye witness to the occurrence. Learned Tribunal has categorically mentioned that in the cross-examination she has admitted that she was not present at the time of accident. So, she cannot tell about the manner of the accident in which it occurred. She also admitted that respondent no.1 has been acquitted in the criminal case.

10. Mere, this fact that a criminal case was registered against respondent no.1 will itself not be a ground to establish the negligence on his part. No doubt, the registration of a criminal case against the driver of the vehicle can be used as a corroborative evidence to the substantive evidence adduced by the claimants on the point of negligence. But, in the instant case, no substantive evidence at all has been produced by the appellants/claimants on the issue of negligence. No eye witness of the occurrence has been examined. Even, the Investigating Officer of the

criminal case has not been examined to establish as to how respondent no.1 was revealed to be the driver of the motorcycle in question as in the FIR his name was not mentioned and the same was registered against the unknown motorcyclist. The copy of the report under Section 173 Cr.P.C is also not a substantive evidence and is only a corroborative evidence. But, as already mentioned that in the absence of the substantive evidence, the corroborative evidence itself cannot be made a base to determine the question of negligence. Consequently, I do not find any illegality in the findings of the learned Tribunal that the appellants/claimants have not been able to establish that the present accident has taken place due to rash and negligent driving of the motorcycle in question by respondent no.1. Therefore, the findings of the learned Tribunal do not call for any interference.

11. Resultantly, the present appeal being without any merit is hereby dismissed in *limine* with no orders as to costs.

January 05, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**